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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 192

WILLIS E. GIESE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER

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INDEX

Subject Index

	Page
Opinions below	1
Basis of jurisdiction	1
Statement of facts	2
Specification of errors to be urged	6
Statutes, executive orders and regulations involved	6
Summary of argument	8
Argument:	
Point I—The purported classification of petitioner upon which the order to report for induction was based was null and void because it was rendered by an agency of appeal not composed of civilians, in direct violation of the Selective Training and Service Act	9
Point II—Petitioner is not precluded under the Falbo case, nor can he be precluded under the Constitution, from raising Point I as a defense to his indictment	16
Conclusion	21
Appendix	
A—Selective Training and Service Act of 1940	23
B—Executive and Administrative Orders affecting Administration of Selective Training and Service Act	26
C—Regulations under Selective Training and Service Act of 1940	30
D—Extracts from Selective Draft Act of 1917	32

CITATIONS

Cases

Bowles v. *U. S.*, 319 U. S. 33	8
Chih Chung Tung v. *United States*, 142 F. (2d) 919	16
Falbo v. *United States*, 320 U. S. 549	8
Haggar v. *Helvering*, 308 U. S. 389, 400	15

Page

Morgan v. *United States*, 298 U. S. 468; 304 U. S. 1... 21
Panama Refining Co. v. *Ryan*, 293 U. S. 388 8
U. S. ex rel Brandon v. *Downer*, 139 F. (2d) 761..... 15
U. S. ex rel Phillips v. *Downer*, 135 F. (2d) 521 21
Wichita R. & Light Co. v. *Public Utilities Comm.*, 260 U. S. 48, 59 20

STATUTES AND MISCELLANEOUS

Judicial Code, Sec. 240(a), 28 U.S.C. 347..... 1,2
Selective Draft Act of 1917..... 11
Selective Training and Service Act of 1940..... 11
40 Stat 76, 534, 885, 955, 50 U. S. C. p. 165..... 32
House of Representatives, Report No. 787, 78th Congress, First Session..... 14

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Opinions Below

The majority and minority opinions of the United States Court of Appeals for the District of Columbia are reported in 143 F. (2d) pages 633 and 636, respectively. The oral opinion of the District Court appears at R. 10.

Basis of Jurisdiction

The writ of certiorari from this Court to the United States Court of Appeals for the District of Columbia was sought and allowed under Section 240(a) of the Judicial

Code, as amended (28 U. S. C. 347). Petitioner was convicted of a felony by the District Court. The United States Court of Appeals for the District of Columbia affirmed this conviction by judgment entered June 19, 1944. The petition for writ of certiorari was filed June 26, 1944, pursuant to Rule 38 of this Court and pursuant to Criminal Appeal Rules Nos. XI and XIII promulgated by this Court on May 7, 1934.

Statement of Facts

Petitioner was found guilty of a violation of the Selective Training and Service Act of 1940,[1] under an indictment charging him with wilful failure to report for induction into the armed forces.

The petitioner, who claims to be a conscientious objector, admittedly refused to obey an order to report for induction which was issued by his local board in the District of Columbia. He contends he was justified in doing so because the order of his local board was based upon a 1-A classification made on an appeal to the President, which appeal had been determined by officers of the United States Army and not by civilians. Petitioner claims that this purported classification was a nullity and that no lawful order to report for induction had been made upon him.

The petitioner registered in the District of Columbia under the Selective Training and Service Act of 1940 on October 6, 1940, and duly submitted his questionnaire. His local board placed him in classification 1-A. He appealed to the District of Columbia Appeal Board and filed Form 47 provided under the Act and Regulations, claiming to be a conscientious objector. The District of Columbia Appeal Board, pursuant to the Act and Regulations, thereupon referred the matter to the Department of Justice for

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[1] 54 Stat. 885, 50 U. S. C. App. 310.

inquiry and hearing. The hearing officer, after considering the case, recommended against allowance of the exemption (R. 6). This recommendation was concurred in by the Department of Justice, who notified the District of Columbia Appeal Board accordingly, and on November 5, 1942, the Appeal Board of the District of Columbia continued petitioner's classification as 1-A. (R. 7). Thereafter petitioner requested William E. Leahy, State Director of Selective Service for the District of Columbia, to take an appeal to the President from the action of the District of Columbia Appeal Board, and such appeal to the President was duly taken by Mr. Leahy (R. 8).

It is in connection with the proceedings on his appeal to the President and the subsequent action of the local board that the petitioner contends he has been denied due process of law. It appeared from the evidence that Major General Lewis B. Hershey, an officer of the United States Army on active duty, was Director of Selective Service at the time involved in the appeal (R. 9). Under Executive Order No. 9279 (Appendix 26) and Administrative Order No. 26 of the War Manpower Commission (Appendix 29) General Hershey was purporting to act for the President of the United States in the hearing of so-called Presidential appeals under the Selective Training and Service Act. When the appeal of the defendant had been forwarded to General Hershey as Director of Selective Service, he had the entire file reviewed by six Army and Navy officers who were members of his staff, who had been assigned to a Board of Review established in the Selective Service System and who made recommendations to General Hershey concerning the disposition of the appeal (R. 9). All of these officers were then on active duty in the Army or Navy respectively. After considering the recommendations made to him by these Army and Navy officers, General Hershey,

on February 19, 1943, purporting to act by authority of the President, signed a decision on the appeal of the registrant to the President as follows (R. 8):

"Appeal No. 17449

Appeal to the President of the United States

Under the Provisions of the Selective Service Regulations District of Columbia, Board of Appeal No. 1, Local Board No. 2, District of Columbia. Registrant: Willis Erle Giese. Order No. 398. Classification on Appeal to the President: Class 1-A.

"This, the 19th day of February, 1943.

"By Authority of the President.

"(S.) LEWIS B. HERSHEY,
Director."

Based upon the above mentioned classification, petitioner's local selective service board on February 25, 1943, ordered petitioner to report for induction March 10. He refused to obey the order and was thereupon indicted.

Petitioner waived a trial by jury and elected to be tried by the court, which waiver was concurred in by the district attorney and approved by the trial judge. At the conclusion of the trial petitioner's counsel moved for a finding of not guilty on the grounds which are set forth herein as the basis for this appeal (R. 10). This motion was denied by the court, and the petitioner was found guilty and sentenced to serve from three months to three years in the penitentiary.

On appeal the United States Court of Appeals for the District of Columbia affirmed petitioner's conviction, with Chief Justice D. Lawrence Groner dissenting.

Although having no direct bearing upon the issues involved in this appeal, it may be of interest to the court to point out that it has been disclosed by the record that petitioner "is obviously a sincere, active, even aggressive,

pacifist," and that the hearing officer felt his case was a close one (R. 6). The hearing officer denied petitioner's claim as a conscientious objector only because "there is nothing to indicate that this attitude arose because of any religious training or belief on his part." The conclusions of the hearing officer, which are set forth in his report offered in evidence by the Government as part of petitioner's selective file, were as follows:

> "This is a close case. In fact it is typical of the most difficult cases which arise in hearing and deciding upon a recommendation in these cases. This registrant is obviously a sincere, active, even aggressive, pacifist. He was active in a peace movement at college many years ago, and joined the War Resisters League, according to the record, in 1934, and was writing pacifist's editorials in 1934 and 1935. But there is nothing to indicate that this attitude arose because of any religious training or belief on his part.
>
> "He attended Sunday School and belonged to the Christian Endeavor Society when he was young but has taken no interest in any religious affairs since his youth, although he is now 35 years old. Also he shows that he wrote a Christmas editorial, emphasizing the relationship between the Christian doctrines and pacifism. But these are normal activities of any school boy or college man, and standing alone, without any active interest shown in later life, certainly do not indicate a religious conviction or belief which would compel a man to take the drastic and important step of refusing to submit to military service. Throughout the file is the constant plea that the registrant be deferred because of his employment and also is the repeated statement of his revulsion at the idea of personally killing a human being. The registrant is intelligent, and at no point stressed the religious phase of his conviction.
>
> "This hearing officer frankly does not believe that Congress intended to exempt a conscientious objector

unless the objection was based upon religious training and belief. He does not believe that Congress intended to exempt an objector no matter how sincere or conscientious unless the objection arose from religious training and belief. This officer also has a feeling that a claimant for exemption has not shown that his conviction is based upon religious training and belief by merely showing that as a boy he went to Sunday School and that as a college student he wrote a Christmas editorial on peace. Thus, laying the question, as he sees it, frankly before the Department of Justice and the Appeals Board, this Hearing Officer recommends against the allowance of the exemption" (R. 6, 7).

Specification of Errors to Be Urged

The following errors which were assigned in the court below and in the petition for writ of certiorari will be urged in this brief:

1. The classification of petitioner on his Presidential appeal, upon which the order to report for induction was based, was null and void because it was rendered by an agency of appeal not composed of civilians, in direct violation of the Selective Training and Service Act.

2. Petitioner was not precluded by the Act, nor could he be precluded under the Fifth Amendment to the Constitution of the United States, from raising point 1 as a defense to his indictment. The case of *Falbo* v. *United States*,[2] is not applicable.

Statutes, Executive Orders and Regulations Involved

Because of their length the full text of the portions of the statutes, executive orders and regulations involved in this case are set out in the appendix. However, the following extracts from the Selective Training and Service Act of 1940 and from the Regulations relating to Presidential

[2] 320 U. S. 549.

appeals disclose fairly the legal points involved on this appeal:

Act, Section 10(a).

"The President is authorized—

"(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

"(2) to create and establish a Selective Service System, * * * and * * * establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. * * * Appeal boards and agencies of appeal within the Selective Service System shall be composed of civilians who are citizens of the United States * * *;

"(3) to appoint by and with the advice and consent of the Senate * * * a Director of Selective Service who shall be directly responsible to him and to appoint and fix the compensation of such other officers, agents and employees as he may deem necessary to carry out the provisions of this Act; Provided, That any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or any reserve component thereof * * * who may be assigned or detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards, appeal boards, or agencies of appeal, established or created pursuant to Section 10(a) (2) * * *) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps, or Coast Guard or reserve component thereof * * *."

Regulations, Section 628.7:

"628.7 *Appeal to the President stays induction.* A registrant shall not be inducted during the time an appeal to the President is pending."

SUMMARY OF ARGUMENT

Before petitioner may be punished for violating an order to report for induction issued in the name of the President, due process of law requires that the order be within the authority of the issuing officer.[3]

The purported classification of petitioner upon which he was ordered to report for induction was made, de novo, on his appeal to the President.[4] The classification order was entered by an "agency of appeal" created by the President to hear "appeals to the President" under the Selective Training and Service Act. The agency of appeal issuing this order was a military agency composed solely of military officials and not of civilians, which was in direct violation of the law. The petitioner, therefore, has not yet been classified under the law upon his appeal to the President, and that appeal may be said to be still pending. By regulation adopted under the statute a registrant may not be ordered to report for induction while his appeal to the President is pending.[5] Petitioner, therefore, has not violated any lawful order to report for induction under the Selective Training and Service Act, and his conviction, if sustained, would violate the Fifth Amendment to the Constitution of the United States.

Although in the recent case of Falbo v. United States[6] this Court held that there could be no judicial review of the propriety of a draft board's classification before acceptance by a registrant of an order to report for induction, this decision did not pass upon the validity of any conviction based on an order in which the statutory procedural requirements themselves had not been complied with. The rationale of that decision, therefore, has no application to the facts of the present case.

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[3] See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 432.

[4] See *Bowles* v. *U. S.*, 319 U. S. 33.

[5] *Regulations*, Sec. 628.7 (See Appendix 32).

[6] *Falbo* v. *U. S.*, 320 U. S. 549.

ARGUMENT

Point I

The purported classification of petitioner upon which the order to report for induction was based was null and void because it was rendered by an agency of appeal not composed of civilians, in direct violation of the Selective Training and Service Act.

The classification of petitioner on which he was ordered to report for induction was made by Major General Lewis B. Hershey by order entered by him on the 19th day of February, 1943 (R. 8). This classification was made by General Hershey as a purported decision by him on petitioner's appeal to the President from prior classifications of the local board and the District of Columbia Board of Appeals. These prior classifications have no bearing on this case, for this Court has held in *Bowles* v. *United States,* (supra) that a classification made on an appeal to the President supersedes all prior classifications, and is in effect a classification *de novo.*

Under Section 10 (a) (2) of the Selective Training and Service Act the President was authorized "to create and establish • • • within the selective service system civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act." Pursuant to this authority the President did create local civilian draft boards within the District of Columbia, and a board of appeals for the District of Columbia, and also provided by Regulations 628 under the Act (Appendix 30-32) for an additional appeal to the President. Under Regulation 628.1 "when either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he

may appeal to the President from any determination of a board of appeal". In the instant case such appeal to the President was taken on behalf of petitioner by William E. Leahy, State Director of Selective Service of the District of Columbia (R. 8).

There is nothing in the Regulations issued under the Act which prescribes how an appeal to the President shall be heard. Under executive orders issued by the President the functions of the President under the Act were originally exercised by the Director of Selective Service, who, it will be recalled, was in the first instance Dr. Clarence A. Dykstra, a well known university president. Later, by Executive Order No. 9279 entered December 5, 1942 (Appendix 26) the President transferred the selective service system and all its functions under the Act to the Chairman of the War Manpower Commission, who, by Administrative Order No. 26, entered the same day (Appendix 29) purported to transfer these Presidential functions to the Director of the Chief of the Bureau of the Selective Service, subject to the direction and supervision of the Chairman of the War Manpower Commission. In actual practice the "appeals to the President" have always been decided by the Director of Selective Service, who, as has been stated, was first the civilian Clarence A. Dykstra, but who, at the time of the decision of the presidential appeal in the instant case, was Major General Lewis B. Hershey of the United States Army.

It is apparent, therefore, that having provided in the regulations for an appeal to the President, the Chief Executive created the Director of Selective Service, and later the Chairman of the War Manpower Commission, acting through the Bureau of Selective Service as an "agency of appeal" within the selective service system, to hear and pass upon presidential appeals.

By the clear mandate of this Act it is provided that "appeal boards and *agencies of appeal* within the selective service system shall be composed of civilians who are citizens of the United States." In order that there might be no question in the Act that persons serving on these agencies of appeal should be civilians and not military officers, it is further provided "that any officer on the active or retired list of the Army, Navy, Marine Corps or Coast Guard, or any reserve component thereof • • • who may be assigned or detailed to any office or position to carry out the provisions of this act (*except to offices or positions on local boards, appeal boards, or agencies of appeal,* established or created pursuant to Section 10 (a) (2)) • • • may serve in and perform the functions of such office or position without loss or prejudice to his status as such officer in the Army, Navy, Marine Corps or Coast Guard or reserve component thereof • • •." It is submitted that language could not be made clearer than this, and that by the express terms of the statute no Army or Navy officer is authorized to act on an "agency of appeal" in the selective service system.[7]

The reasons for this wise provision in the Act are obvious. The Congress was faced with the necessity of raising a very large army from the civilian population of the United States. This Army was to be raised under democratic processes of law. This great republic, therefore, sought to act through its normal civilian processes, and without the military or naval compulsion which had been

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[7] The Selective Draft Act of 1917 differed in essential particulars from the Selective Training and Service Act of 1940. Under the statute enacted during the first world war civilian personnel were required only on local boards and on *district* boards of appeal. Decisions of the district boards could be affirmed, modified or reversed by the President "in accordance with such rules and regulations as the President may prescribe." (See Appendix 32.)

characteristic of the Nazi and Fascist states. It was essential to public acceptance of the operation of this selective service system that it be placed in the hands of civilians, and every effort was made by the Act to prevent the military from having any control over the system or of selectees until they had been actually inducted. This emphasis on civilian control was notable in the early days of the Selective Training and Service Act, when Dr. Clarence A. Dykstra acted as Director of the Selective Service system.

But the Presidential appeal of Willis E. Giese was heard by an agency of appeal under conditions which did direct violence both to the letter and to the spirit of the law. The actual final decision was rendered not by Paul V. McNutt, the civilian chairman of the War Manpower Commission, to whom the President had delegated his authority under the Act, but by Major General Lewis B. Hershey, "an officer of the United States on active duty" (R. 9). Before deciding this appeal Major General Hershey had the petitioner's file reviewed by "a board of review established within the selective service system * * * to consider Presidential appeals and make recommendations * * * concerning them" (R. 9). This board of appeals was composed not of civilians but of five officers of the Army of the United States and one officer of the United States Naval Reserve, all of whom were on active duty in the armed forces of the United States (R. 9). And it was on the recommendation of this military and naval board of review that General Hershey considered and purported to decide petitioner's "Presidential appeal".

It is submitted that a more flagrant violation of the Selective Training and Service Act in the consideration of Presidential appeals could not be imagined. By such action it is apparent that the ultimate review in determining policies of exemption for persons claiming to be con-

scientious objectors under the Act was placed in the hands of Army and Navy officers. These Army and Navy officers, headed by Major General Hershey, could not legally act as an "agency of appeal" under the Act. No valid decision on appellant's appeal to the President could be rendered by such an agency of appeal.

The regulations specifically provide: "Appeal to the President stays induction. A registrant shall not be inducted during the time an appeal to the president is pending[8]."

Petitioner's appeal to the President was duly taken. It is submitted that as this appeal has never been decided by any lawfully constituted "agency of appeal" authorized to consider it, the appeal as a matter of law is still pending; that under the regulations thereunder the local board was wholly without authority to order petitioner to report for induction; and that any such order to report is wholly ineffective and void.

It is interesting to note in passing that after petitioner had been indicted in this case, and in fact after Major General Hershey had originally been subpoenaed to testify, the Congress amended the Selective Training and Service Act to remove the restrictions on appeals to the President which are involved in this case.

By amendment to the Act, adopted on December 3, 1943, the pertinent sections of the Act were changed to read as follows:

> "Section 10 (a)
>
> The President is authorized—
>
> (2) * * * to * * * establish within the selective service system civilian local boards, civilian appeal boards, and such other agencies, including agencies of appeal as may be necessary to carry out the pro-

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8 Regulation 628.7.

visions of this Act * * *. Appeal boards within the selective service system shall be composed of civilians who are citizens of the United States."

Note: By this amendment the requirement that "agencies of appeal" (other than appeal boards) be composed of civilians was deleted from the act.

"(3) Provided that any officer on the active or retired list of the Army, Navy, Marine Corps or Coast Guard, or any reserve component thereof * * * who may be assigned or detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards or appeal boards established or created pursuant to Section 10 (a) (2)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps or Coast Guard. * * *"

Note: The restriction with respect to agencies of appeal (other than appeal boards) was deleted by the amendment.

In the report of the House Committee on Military Affairs accompanying these proposed amendments, it was stated that "since the original passage of the Selective Training and Service Act military personnel has served on the higher boards of appeal, but because of the lack of specific authority in the original language, your Committee feels that this clarification is necessary."[9]

It is submitted that this statement on the part of the Military Affairs Committee of the House of Representatives is disingenuous, to say the least, for service by military personnel on higher board of appeals had been directly prohibited by the original Selective Training and Service Act, and the provisions could hardly be said to be in such need of "clarification". It is well settled that "retroactive declarations of legislative intent, prejudicial to

[9] See Report No. 787 H.R. 78th Congress, First Session.

those who have acted under earlier statutes, whose construction seems clear • • • ought not to be implied more than the legislative intention to give retroactive operation to a new statute." *Haggar* v. *Helvering*, 308 U. S. 389, 400.

The point raised in this brief has never been directly passed upon by this Court or by any Circuit Court of Appeals. It is true that in the Bowles case (supra) the petitioner there sought to raise the point on a petition for rehearing in this Court and that such petition was denied; but there is no reason to assume that the denial of the petition for rehearing was a rejection of the point of its merits. In the case of *U. S. ex Rel. Brandon* v. *Downer*, 139 F. (2d) 761, decided by the Circuit Court of Appeals, 2nd Circuit, on January 7, 1944, the point was sought to be raised in habeas corpus proceedings, but the court declined to consider it, saying:

> "• • • Assuming arguendo that the appeal (i. e. the appeal to the President) was not properly considered under the statute as it read prior to this recent amendment, a reversal in the instant case on that ground would merely mean that General Hershey would now reconsider the matter with doubtless the same result. The question is therefore academic." (p. 766.)

Although the question may have been academic for the reasons stated in the Brandon habeas corpus proceedings, it is far from academic in the instant case. The petitioner has been convicted of a crime, not under the statute as amended, but under the statute as originally enacted. If he serves his sentence it would be because of a violation of the original statute. Who can say that if his appeal to the President is hereafter properly decided under the new statute, as amended, the petitioner may not now comply with any order issued as a result of the decision on such appeal.

Point II

Petitioner is not precluded under the Falbo case, nor can he be precluded under the Constitution, from raising Point I as a defense to his indictment.

At petitioner's trial, and on appeal, the government took the position that petitioner is precluded by the decision of this Court in *Falbo* v. *United States, supra,* from raising Point I of this brief as a defense to his indictment for willful violation of the Selective Training and Service Act. Both the District Court and the majority opinion of the United States Court of Appeals for the District of Columbia upheld the government position in this regard. But in a dissenting minority opinion of the United States Court of Appeals, Chief Justice Groner contended that the *Falbo* decision had no application to the facts of the case at bar and the Circuit Court of Appeals for the First Circuit has expressed a similar view in a like situation, in *Chih Chung Tung* v. *United States,* 142 F. (2d) 919.

In the *Falbo* case this Court upheld the conviction of a registrant for failure to report for induction under the Selective Training and Service Act, and held that the trial court properly refused to permit the registrant to show that his order to report for induction had been based upon an "erroneous classification." The court held that the board's order to report was only "a necessary intermediate step in a united and continuous process designed to raise an army speedily and efficiently," and that the Congress had not authorized judicial review "of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective service process."

But in the *Falbo* case this Court also said:

> "Only after he has exhausted this procedure [i. e. the procedure of appeal under the act, including the

right in certain circumstances to appeal to the President] is a protesting registrant ordered to report for service."

There is nothing in the decision in the *Falbo* case to indicate that a registrant may be lawfully convicted of the violation of an order directing him to report for induction if such order is issued *before* such procedure has been exhausted. It will be noted that while the court said the statute precludes judicial review in this intermediate stage of the "propriety" of a board's classification the court did not say Congress had precluded judicial review of a *failure to take the procedural steps* required as a condition precedent to a board's classification.

In *Chih Chung Tung* v. *United States, supra,* a Chinese registrant who had been classified in 1-A by his local board on September 21, 1942, was ordered by that board four days later to report for induction. Five days thereafter, and within the ten day period allowed for an appeal to the State Board of Appeals from a classification by the local board (under Regulation 627.2 (c)) the registrant wrote his local board a letter in which he said "I appeal again not to be drafted to join the Army or Navy" for certain reasons set out in the letter. The registrant claimed to be a theological student who was preparing for teaching.

The local board did not treat Chih Chung Tung's letter as an appeal to the State Board of Appeal or make any reply to it, but after further investigation of registrant's status the local board on December 28, 1942, mailed him another order to report for induction. For failure to obey this order Chih Chung Tung was indicted, tried and convicted.

The Circuit Court of Appeals for the First Circuit held that the letter written by Chih Chung Tung to his local board constituted a valid "appeal" to the Appeal board

from the local board's classification; that when the registrant was ordered to report for induction on December 28, 1942, such appeal was pending; and that in consequence the order to report was void and of no effect by virtue of Regulation 627.41.[10]

Upon the foregoing state of facts the Circuit Court of Appeals had the following comment to make upon the decision of this Court in the *Falbo* case:

> "The government argues, however, that even assuming that the defendant's letter of September 29 constituted a valid appeal, still under the decision in Falbo *v.* United States, 320 U. S. 549, the defendant would have to obey his draft board's order to report for induction even though invalid, be inducted, and then apply for a writ of habeas corpus at which time, but not before, he could present evidence that his induction had been in violation of 'some legal right.' We do not agree.
>
> "In the Falbo case (320 U. S. at page 554), the Supreme Court said that 'The narrow question' before it was 'whether Congress has authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process.'. It answered this question in the negative holding that under the Act a registrant cannot challenge his classification in the courts until he had pursued the administrative remedies provided to the end, that is, up to the point of acceptance for service by the military authorities. In the case at bar, however, the situation is quite different. Here the defendant when he was ordered to report for induction had not somewhere along the line by choice abandoned the administrative remedies given him by the Act, but instead was attempting to pursue them. Contrary to

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[10] Regulation 627.41 is as follows:

"Appeal stays induction. A registrant shall not be inducted either during the period afforded him to take an appeal to the board of appeal or during the time such an appeal is pending."

the government's view we are of the opinion that the Act, the Regulations and the implications of the Falbo decision, in which the Supreme Court (320 U. S. at page 552), said that the Selective Service System is designed 'to operate as one continuous process for the selection of men for national service' (see Billings *v.* Truesdell, 321 U. S. 542), all point to the conclusion that a registrant has the right to pursue his administrative remedies uninterruptedly to the end, and that as a necessary consequence an order to report for induction issued while an appeal is pending in the system is void and need not be obeyed." (142 F. (2d) at pp. 921, 922.)

To the same effect is the dissenting opinion of Chief Justice Groner of the U. S. Court of Appeals for the District of Columbia. In the case now before this Court Judge Groner commented on the *Falbo* decision as follows:

"• • • The United States insist that the case of *Falbo* v. *United States* • • • is controlling, but the point in that case, as I view it, was wholly different from the point in this. All that is held there is that the Congress has not authorized judicial review 'of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report.' The question here is whether there is a similar lack of judicial power in a case in which the order to report is challenged on the ground that *no* classification exists and the procedural steps under the law to obtain one are incomplete and pending. Considered in this view, I think there is a striking dissimilarity in the two situations, and I find nothing in the Falbo case to indicate that Congress has precluded judicial review in a case of failure in the procedural steps required as a condition to classification. Here, as we have seen, the point made is that the Local Board's order to report for induction was made at a time when the question of the registrant's classification was still pending and undetermined, and this, of course, on the theory that the action of the appeal

> agency,—i. e. General Hershey—in reclassifying him as 1-A, was wholly ultra vires and void. * * *" (143 F. (2d) at p. 637.)

It is respectfully submitted that the interpretation placed upon the *Falbo* case by the two opinions quoted above is the correct interpretation and that any other interpretation would do violence to petitioner's rights under the Fifth Amendment to the Constitution of the United States.

Petitioner submits that Congress did not and could not constitutionally preclude judicial review of an order made in the absence of the procedural steps which are conditions precedent under the Act. Can it be argued, for example, that Congress intended to preclude judicial review of an order to report for induction made by a clerk of a local board on his own motion and without authority of such local board, or judicial review of a forged classification, or judicial review of any other case in which the minimum procedural requirements of the Act and Regulations had not been complied with?

In the case of *Panama Refining Company* v. *Ryan, supra,* this Court, speaking through Chief Justice Hughes, said (p. 432):

> "If the citizen is to be punished for the crime of violating a legislative order of an executive officer, or of a board or commission, due process of law requires that it shall appear that the order is within the authority of the officer, board or commission * * *."

And in *Wichita R. & Light Co.* v. *Public Utilities Comm.,* 260 U. S. 48, 59, this Court used the following language which was requoted with approval in the *Panama Refining Company* case, just cited:

> "In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course

of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action."

The *Morgan* cases, decided by this Court are to the same effect.[11]

Under these decisions, it is submitted that as Major General Hershey was without authority, acting as an agency of appeal under the Selective Training and Service Act, to issue the classification upon which the order to report for induction was based, the conviction and sentence of petitioner operates to deprive him of his liberty without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

Conclusion

Although it is not an issue on this appeal, it is evident from the record that petitioner is an earnest and sincere pacifist (R. 6) and that the only question which disturbed the reviewing agencies was whether or not he was a conscientious objector within the meaning of the Act which requires conscientious objections to be based upon "religious training and belief." If petitioner had followed the procedure of Randolph Phillips[12] who sought and obtained release by *habeas corpus*, he would probably have been held to have met the test of a conscientious objector under the Act, for the religious and philosophical beliefs of the two men are strikingly similar.

But on the merits of this appeal, as it is now presented to this Court, an important and fundamental principle of constitutional law is presented for decision. The liberties

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[11] *Morgan* v. *United States*, 298 U. S. 468; 304 U. S. 1.

[12] *U. S. ex rel. Phillips* v. *Downer* (C. C. A. 2nd), 135 F. (2d) 521.

of a citizen are not lightly to be disregarded, even when such liberties are necessarily restrained by the nation's war to preserve them from outside aggression. While we struggle to preserve the validity and integrity of our Constitution, the courts must not permit, in the process, the destruction of those very constitutional safeguards for which we fight. The Fifth Amendment is a fundamental part of our Bill of Rights. Due process of law is guaranteed to every citizen. It is submitted that to uphold this conviction would be to deny such due process of law to Willis E. Giese.

Respectfully submitted,

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APPENDIX

A. Selective Training and Service Act of 1940.

The following provisions of the Selective Training and Service Act of 1940 54 Stat. 885, 50 U. S. C. App. 301, et seq. are those having a bearing upon this appeal. These provisions remain without amendment until after the indictment of petitioner in this case:

Section 5(g).

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10(a) (2) * * *. Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appropriate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the Appeal Board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal

board shall give consideration to but shall not be found to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."

Section 10(a).

"The President is authorized—

"(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

"(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe. Appeal boards and agencies of appeal within the Selective Service System shall be composed of civilians who are citizens of the United States. No person who is an officer, member, agent, or employee of the Selective Service System, or of any such local or appeal board or other agency,

shall be excepted from registration, or deferred from training and service, as provided for in this Act, by reason of his status as such officer, member, agent, or employee;

"(3) to appoint by and with the advice and consent of the Senate, and fix the compensation at a rate not in excess of $10,000 per annum, of a Director of Selective Service who shall be directly responsible to him and to appoint and fix the compensation of such other officers, agents, and employees as he may deem necessary to carry out the provisions of this Act: Provided, That any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards, appeal boards, or agencies of appeal established or created pursuant to section 10(a) (2) * * *) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps, or Coast Guard or reserve component thereof, or as such officer or employee in any department or agency of the United States: Provided further, That any person so appointed, assigned or detailed to a position the compensation in respect of which is at a rate in excess of $5,000 per annum shall be appointed, assigned or detailed by and with the advice and consent of the Senate: Provided further, That the President may appoint necessary clerical and stenographic employees for local boards and fix their compensation without regard to the Classification Act of 1923 * * *, as amended, and without regard to the provisions of civil-service laws.

"(4) to utilize the services of any or all departments and any and all officers or agents of the United States and to accept the services of all officers and agents of the several States, Territories, and the District of Columbia and subdivisions thereof in the execution of this Act."

Section 10(b)

"The President is further authorized, under such rules and regulations as he may prescribe, to delegate and provide for the delegation of any authority vested in him under this Act to such officers, agents, or persons as he may designate or appoint for such purpose or as may be designated or appointed for such purpose pursuant to such rules and regulations as he may prescribe."

B. Executive and Administrative Orders affecting Administration of Selective Training and Service Act

Executive Order No. 9279, Dec. 5, 1942, 7 F. R. 10177

Functions of Selective Service System Transferred to War Manpower Commission

In order to promote the most effective mobilization and utilization of the national manpower and to eliminate so far as possible waste of manpower due to disruptive recruitment and undue migration of workers, and by virtue of the authority vested in me by the Constitution and Statutes, including the First War Powers Act, 1941 (sections 601-622 of this Appendix), and the Selective Training and Service Act of 1940 (sections 301-318 of this Appendix), as amended, as President of the United States and as Commander in Chief of the Army and the Navy, it is hereby ordered as follows:

1. The War Manpower Commission (established by Section 1 of Executive Order No. 9139, dated April 18, 1942) shall consist of a Chairman appointed by the President and one representative, designated subject to the approval of the Chairman, of each of the following departments and agencies: The Department of War, the Department of the Navy, the Department of Agriculture, the Department of Labor, the Federal Security Agency, the War Production Board, the United States Civil Service Commission, the National Housing Agency, and such other executive departments and agencies as the President shall determine; and a joint representative of the War Shipping Administration and the Office of Defense Transportation, designated by the Chairman of the War Manpower Commission (hereinafter referred to as the Chairman).

2. (a) The Selective Service System created and established for the purpose of carrying out the provisions of the Selective Training and Service Act of 1940, as amended, and all of its functions, powers, duties, personnel (including the Director of Selective Service), records, property and funds (including all unexpended balances of appropriations, allocations, or other funds, available for the administration of said Act, as amended) are transferred to the War Manpower Commission in the Office for Emergency Management of the Executive Office of the President, and shall be administered under the supervision and direction of the Chairman. The local boards and appeal boards of the Selective Service System shall, subject to the supervision and direction of the Chairman, continue to

exercise the functions, powers, and duties vested in them by the Selective Training and Service Act of 1940, as amended.

(b) The functions, powers, and duties of the Director of Selective Service, including authority delegated to him by the President under the provisions of the Selective Training and Service Act of 1940, as amended, are transferred to the Chairman and may be exercised through the Director of Selective Service and such other officers, agents, and persons and in such manner as the Chairman may determine.

(c) The Chief of Finance, United States Army, shall act as the fiscal, disbursing, and accounting agent of the Chairman in carrying out the provisions of the Selective Training and Service Act of 1940, as amended.

3. The Secretary of War and the Secretary of the Navy shall, after consultation with the Chairman, determine the number of men required to be selected each month in order to fulfill the total respective requirements of the Army and Navy as approved by the President. The Chairman shall furnish the required number of men through the Selective Service System.

4. After the effective date of this Order, no male person who has attained the eighteenth anniversary and has not attained the thirty-eight anniversary of the day of his birth shall be inducted into the enlisted personnel of the armed forces (including reserve components), except, under provisions of the Selective Training and Service Act of 1940, as amended; but any such person who has, on or before the effective date of this Order, submitted a bona fide application for voluntary enlistment may be enlisted within ten days after said date.

5. Insofar as the effective prosecution of the war requires it, the Chairman shall take all lawful and appropriate steps to assure that (a) all hiring, rehiring, solicitation, and recruitment of workers in or for work in any establishment, plant, facility, occupation, or area designated by the Chairman as subject to the provisions of this section shall be conducted solely through the United States Employment Service or in accordance with such arrangements as the Chairman may approve; and (b) no employer shall retain in his employ any worker whose services are more urgently needed in any establishment, plant, facility, occupation, or area, designated as more essential by the Chairman pursuant to this section.

6. The Secretary of War and the Secretary of the Navy shall take such steps as may be necessary to assure that all training programs for the armed forces (including their re-

serve components) and the Women's Army Auxiliary Corps, which are carried on in non-Federal educational institutions, conform with such policies or regulations as the Chairman, after consultation with the Secretary of War and the Secretary of the Navy, prescribes as necessary to insure the efficient utilization of the Nation's educational facilities and personnel for the effective prosecution of the war.

7. The Chairman shall (a) issue such policies, rules, regulations, and general or special orders as he deems necessary to carry out the provisions of this Order, (b) to take steps to prevent and relieve gross inequities or undue hardships arising from the exercise of the provisions of Section 5 of this Order insofar as he finds so doing will not interfere with the effective prosecution of the war, and (c) establish such procedures (including appeals) as are necessary to assure a hearing to any person claiming that any action, taken by any local or regional agent or agency of the War Manpower Commission pursuant to Section 5 of this Order and said Executive Order No. 9139, is unfair or unreasonable as applied to him.

8. (a) The Chairman may perform the functions and duties and exercise the powers, authority, and discretion conferred upon him by this Order or any other Order of the President through such officers, agents, and persons and in such manner as he shall determine.

(b) The Chairman may avail himself of the services and facilities of such Executive departments and agencies as he determines may be of assistance in carrying out the provisions of this Order. He may accept the services and facilities of State and local agencies.

9. Subject to appeal to the President or to such agent or agency as the President may designate, each Executive department and agency shall so utilize its facilities, services and personnel and take such action, under authority vested in it by law, as the Chairman, after consultation with such department or agency, determines necessary to promote compliance with the provisions of this Order or of policies, directives, or regulations prescribed under said Executive Order No. 9139.

10. The Chairman shall appoint a Management-Labor Policy Committee to be selected from the fields of labor, agriculture, and industrial management, and shall consult with the members thereof in carrying out his responsibilities. The Chairman may appoint such other advisory committees composed of representatives of governmental or private groups or both as he deems appropriate.

11. The Chairman shall be ex officio an additional member of the Economic Stabilization Board established by Executive Order No. 9250, dated October 3, 1942.

12. All prior Executive Orders, insofar as they are in conflict herewith, are amended accordingly. All prior regulations, rulings, and other directives relating to the Selective Service System shall remain in effect, except insofar as they are in conflict with this Order or are hereafter amended by regulations, rulings, or other directives issued by or under the direction of the Chairman.

13. This Order shall take effect immediately and shall continue in force and effect until the termination of Title I of the First War Powers Act, 1941 (sections 601-605 of this Appendix).

Administrative Order No. 26, War Manpower Commission Dec. 5, 1942, 7 F. R. 10512

Bureau of Selective Service

There is hereby established in the War Manpower Commission a Bureau of Selective Service which shall include the Selective Service System created and established for the purpose of carrying out the provisions of the Selective Training and Service Act of 1940, as amended (sections 301-318 of this Appendix), and transferred to the War Manpower Commission by Executive Order No. 9279 dated December 5, 1942. The Director of Selective Service shall act as the Chief of the Bureau of Selective Service, subject to the direction and supervision of the Executive Director.

Subject to the direction and supervision of the Executive Director, the Chief of the Bureau of Selective Service, acting under the title of Director of Selective Service, shall perform the functions, powers, and duties held by the Director of Selective Service, prior to Executive Order No. 9279, including authority delegated to him by the President under the provisions of the Selective Training and Service Act of 1940, as amended (Sections 301-318 of this Appendix), all of which authority, functions, powers and duties were transferred to the Chairman of the War Manpower Commission by Executive Order No. 9279.

All delegations of any functions, powers and duties of the Director of Selective Service heretofore made by him to officers, agents and persons of the Selective Service System are ratified and confirmed, and such officers, agents and persons shall exercise the functions, powers and duties exercised by them on December 5, 1942, subject to the order of the Chief of the Bureau of Selective Service.

The Chief of the Bureau of Selective Service is authorized to delegate any authority granted to him under this Order.

All existing rules, regulations, rulings, orders and procedures promulgated and established by the Director of Selective Service are hereby contained in full force and effect until modified, amended or rescinded by appropriate action.

A local draft board is an "executive" or "administrative body", as respects right to review its decisions by certiorari. Drumheller *v.* Berks County, Local Board No. 1 of Selective Service System, D. C. Pa. 1942, 43 F. Supp. 881, affirmed, 1942, 130 F. 2d 610.

C. Regulations under Selective Training and Service Act of 1940, relating to appeals to the President which were in effect from and after December 15, 1942, the time during which petitioner's appeal to the President has been pending in the instant case:

628.1. Who may appeal to the President from any determination of a board of appeal. (a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of a board of appeal. He may take such an appeal at any time.

(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof.

(c) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of Selective Service, the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal.

628.2. Appeal to the President. The registrant or any person who claims to be a dependent of the registrant or any person who has filed written information as to the occupational status of the registrant, at any time within 10 days after the mailing by the local board of the Notice of Continuance of Classification (Form 58) or the Notice of Classification (Form 57) notifying the registrant that the local board classification has been affirmed or changed, may ap-

peal to the President provided the registrant was classified by the board of appeal in either Class 1-A, Class 1-A-O, or Class IV-E and one or more members of the board of appeal dissent from such classification. The local board may permit any person who is entitled to appeal to the President under this paragraph to do so, even though the 10-day period herein provided for such an appeal has elapsed, if it is satisfied that the failure of such person to appeal within such 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board permits such an appeal, the right of such persons to appeal to the President shall terminate at the end of the 10-day period herein provided.

628.4. Procedure on appeal to the President. (a) When an appeal to the President is taken, the local board shall (1) notify the registrant that such an appeal has been taken, unless he is the person who took the appeal; (2) if the registrant's file is in its possession, forward the entire file to the State Director of Selective Service; and (3) enter on the Classification Record (Form 100) the date the file is forwarded or the date it receives notice that an appeal has been taken. The local board shall not place in the file any statement or expression of opinion concerning the information in the registrant's file or the reasons for its decision.

(b) When an appeal to the President is taken, the State Director of Selective Service shall check the file which is in his possession or which is forwarded to him to be sure that all procedural requirements have been properly complied with and, if he discovers any procedural defects, return the file for correction. If any information has been placed in the file which was not considered by the local board in making the classification from which the appeal to the President is taken, the State Director of Selective Service shall review such information and, if he is of the opinion that such information, if true, would justify a different classification of the registrant, return the file to the local board with instructions to reopen the registrant's classification and classify the registrant anew.

(c) When the State Director of Selective Service has complied with the provisions of (b) above, he shall, unless the file is returned to the local board, forward the file to the Director of Selective Service.

628.6. Procedure of local board when appeal to the President is returned. When the file of the registrant is received by the local board, it shall:

(1) If the classification of the registrant by the board of appeal has been affirmed, mail a Notice of Continuance of Classification (Form 58) to the registrant and a Classification Advice (Form 59) to the person making the appeal, if other than the registrant;

(2) If the classification of the registrant by the board of appeal has been changed and the registrant has been placed in a different class, mail a Notice of Classification (Form 57) to the registrant and a Classification Advice (Form 59) to the person making the appeal, if other than the registrant;

(3) Enter in the Classification Record (Form 100) the date of the mailing of such notice and advice; and

(4) If the classification of the registrant by the board of appeal has been changed, enter the new classification in the Classification Record (Form 100) and, with red ink, draw a line through the board of appeal classification."

628.7. Appeal to the President stays induction. A registrant shall not be inducted during the time an appeal to the President is pending.

(*Note:* Regulations 628.1, 628.2, 628.4 and 628.7, quoted above, had been amended on December 15, 1942, and Regulation 628.6 had been amended on November 18, 1942. These amendments therefore, while made after the classification of petitioner by his State Board of Appeals, which took place on November 5, 1942, were prior to the filing by the State Director of Selective Service for the District of Columbia of petitioner's appeal to the President which took place on January 1, 1943. With the possible exception of Regulation 628.7 the amendments did not change any procedural or substantive rights of petitioner. From February 1, 1942, to December 15, 1942, Regulation 628.7 read as follows:

628.7. Appeal to the President stays induction. The local board shall not issue an order for a registrant to report for induction either during the period accorded the registrant to take an appeal to the President or during the time such an appeal is pending. Any such order to report for induction which has been issued shall be ineffective and shall be canceled by the local board.

D. Extracts from Selective Draft Act of 1917

The following extracts from the Selective Draft Act of May 18, 1917, as amended, 50 U. S. C. p. 165, "Temporary War Legislation", 40 Stat. 76, 40 Stat. 534, 10 Stat. 885, 40 Stat. 955, relate to local boards, district appeal boards, and presidential appeals under that Act:

The President is hereby authorized, in his discretion, to create and establish throughout the several States and subdivi-

sions thereof and in the Territories and the District of Columbia local boards, and where, in his discretion, practicable and desirable, there shall be created and established one such local board in each county or similar subdivision in each State, and one for approximately each thirty thousand of population in each city of thirty thousand population or over, according to the last census taken or estimates furnished by the Bureau of Census of the Department of Commerce. Such boards shall be appointed by the President, and shall consist of three or more members, none of whom shall be connected with the Military Establishment, to be chosen from among the local authorities of such subdivisions or from other citizens residing in the subdivision or area in which the respective boards will have jurisdiction under the rules and regulations prescribed by the President. Such boards shall have power within their respective jurisdictions to hear and determine, subject to review as hereinafter provided, all questions of exemption under this Act, and all questions of or claims for including or discharging individuals or classes of individuals from the selective draft, which shall be made under rules and regulations prescribed by the President, except any and every question or claim for including or excluding or discharging persons or classes of persons from the selective draft under the provisions of this Act authorizing the President to exclude or discharge from the selective draft 'Persons engaged in industries, occupations, or employments, including agriculture, found to be necessary to the maintenance of the Military Establishment, or the effective operation of the military forces, or the maintenance of national interest during the emergency.

The President is hereby authorized to establish additional boards, one in each Federal judicial district of the United States, consisting of such number of citizens, not connected with the Military Establishment, as the President may determine, who shall be appointed by the President. The President is hereby authorized, in his discretion, to establish more than one such board in any Federal judicial district of the United States, or to establish one such board having jurisdiction of an area extending into more than one Federal judicial district.

Such district boards shall review on appeal and affirm, modify, or reverse any decision of any local board having jurisdiction in the area in which any such district board has jurisdiction under the rules and regulations prescribed by the President. Such district boards shall have exclusive original jurisdiction within their respective areas to hear and determine all questions or claims for including or excluding or discharging persons or classes of persons from the selective draft, under the provisions of this Act, not included within the original jurisdiction of such local boards.

The decisions of such district board shall be final except that, in accordance with such rules and regulations as the President may prescribe, he may affirm, modify or reverse any such decision.

Any vacancy in any such local board or district board shall be filled by the President, and any member of any such local board or district board may be removed and another appointed in his place by the President, whenever he considers that the interest of the nation demands it.

The President shall make rules and regulations governing the organization and procedure of such local boards and district boards, and providing for and governing appeals from such local boards to such district boards, and reviews of the decisions of any local board by the district board having jurisdiction, and determining and prescribing the several areas in which the respective local boards and district boards shall have jurisdiction, and all other rules and regulations necessary to carry out the terms and provisions of this section, and shall provide for the issuance of certificates of exemption, or partial or limited exemptions, and for a system to exclude and discharge individuals from selective draft.